

United States Government
NATIONAL LABOR RELATIONS BOARD
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March 24, 2006

Davis & Campbell, LLC
Keith J. Braskich, Attorney
401 Main Street, Suite 1600
Peoria, IL 61602

**Re: United States Gypsum Company
Case 19-RM-2235**

Dear Mr. Braskich:

The above-captioned case, petitioning for an investigation and determination of representation under Section 9 of the National Labor Relations Act, has been carefully investigated and considered.

On March 14, 2006, the Employer filed an RM petition asserting that it possessed reasonable good-faith uncertainty as to the Union's continued majority status. *Levitz Furniture Co.*, 333 NLRB 717 (2001). To demonstrate its reasonable good-faith uncertainty, the Employer provided evidence regarding a decline in the number of dues paying members, a decline in the Union's activity as the bargaining representative, and the expressed belief of some employees that the Union would no longer bargain on behalf of the employees. As detailed below, I find that such evidence is insufficient to sustain a petition under the *Levitz* standard.

Prior to the time the petition was filed, the Employer and Union were parties to a collective bargaining agreement. Although the agreement did not contain a union security clause, some unit employees were paying dues to the Union. However, the Employer presented evidence that the number of dues paying members had dropped from 11 employees in August 2003 to 3 employees out of a total of 69 unit employees in August 2005. Nevertheless, such evidence cannot sustain the petition since the Board has traditionally disregarded declines in the membership of dues paying members as unreliable because the decline can be attributed to reasons other than the loss of support for the Union. *Tri-State Health Service, Inc.*, 339 NLRB 71 (2003). The Employer also provided evidence regarding the Union's failure to appoint a new steward since about September 2004, to hold union meetings, to file grievances, to visit the plant, and to respond to bargaining proposals. This type of union inactivity, however, involves internal union matters and may reflect the Union's attitude to its duties to unit employees rather than shedding light on the unit employees' views towards the Union. *Henry Bierce Co.*, 328 NLRB 646 (1999). Thus, this evidence of inactivity is insufficient to establish good faith uncertainty of the Union's continuing majority status. Finally, the Employer submitted evidence that employees made statements about their belief that the Union might discontinue its function as the bargaining agent for the unit employees. However, this evidentiary submission merely presents the employees' uncertainty as to whether the Union wishes to continue in its role as the bargaining representative and -- even assuming, arguendo, that the number of unit

members expressing such sentiment would quantitatively support the petition's filing -- the evidence does not reliably indicate employees' dissatisfaction with the Union. *Levitz*, 333 NLRB at 729; See also *Scepter Ingot Castings, Inc.*, 331 NLRB 1509 (2000).

Accordingly, I find the evidence provided by the Employer in support of its petition to be insufficient to establish a good faith uncertainty as to the Union's majority status. Therefore, I conclude that further processing of the petition is unwarranted; I am dismissing the petition; and I am canceling the hearing in this matter scheduled for March 28, 2006.

Pursuant to the National Labor Relations Board Rules and Regulations, any party may obtain a review of this action by filing a request therefore with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned. This request for review must contain a complete statement setting forth the facts and reasons on which it is based. The request for review (eight copies) must be received by the Executive Secretary of the Board by close of business at 5:00 p.m., ET April 7, 2006. Upon good cause shown, however, the Board may grant special permission for a longer period within which to file. A request for extension of time should be submitted to the Executive Secretary in Washington, and a copy of any such request for extension of time should be submitted to this Office and to each of the other parties to this proceeding.

The request for review and any request for extension of time must include a statement that a copy has been served on the Office and on each of the other parties to this proceeding in the same or a faster manner as that utilized in filing the request with the Board.

Sincerely,

Richard L. Ahearn
Regional Director

Enclosures

cc: National Labor Relations Board, Attn: Executive Secretary, 1099 - 14th Street N.W., Washington, D.C. 20570

United States Gypsum Company, Timothy J. Miller, Plant Manager, 401 C Street NW, Auburn, WA 98001

IAM & AW, Local 79, DL 160, 9135 15th Place South, Seattle, WA 98108

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